

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

January 13, 2011

Larry D. Sweetser, Jr., President
Sweetser & Associates, Inc.
2115 Rheem Avenue
Richmond, CA 94801

Subject: Woodmill Recycling Company (SWIS No. 07-AA-0062; Contra Costa County)
Request for Stay of Notice and Order To Cease and Desist and Clean Up and
Abatement No. EA-2010-01

Dear Mr. Sweetser:

I am writing in response to your request of December 30, 2010, made on behalf of your client Woodmill Recycling Company (SWIS No. 07-AA-0062) ("Woodmill"), that CalRecycle stay the effect of the above Notice and Order, in whole or in part, pursuant to Public Resources Code Section 45017. I have considered your request and the information you and the Contra Costa County Local Enforcement Agency have submitted subsequent to the request. I have also consulted with CalRecycle staff. On the grounds stated in the enclosed Director Action Request, dated January 10, 2011, and which I have executed on this date, I deny Woodmill's Request for Stay. Woodmill has failed to establish that there exist extraordinary circumstances that justify a stay of enforcement, has failed to establish that the immediate effect of the Notice and Order will preclude or interfere with the provision of an essential public service such that the public health and safety or the environment will be adversely affected, and has failed to establish other grounds that justify a stay, as required for issuance of a stay under Section 45017.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark Leary", is written over a printed name and title.

Mark Leary
Acting Director

Enclosure – Director Action Request, dated January 10, 2011

cc: John Milochik, Woodmill Recycling Company (w/ encl)
Randall L. Sawyer, Contra Costa County Local Enforcement Agency (w/ encl)
Ted Rauh, Deputy Director (w/ encl)



COPY

**DIRECTOR
ACTION REQUEST**


To: Mark Leary, Acting Director
Department of Resources Recycling and Recovery


Reviewed by: Lorraine Van Kekerix, Branch Chief
Waste Evaluation and Enforcement Branch

Mark de Bie, Branch Chief
Permits and Assistance Branch
Permits & Certification Division

Elliot Block, Chief Legal Counsel
Michael Bledsoe, Senior Legal Counsel
Legal Affairs Office

From:


Ted Rauh, Deputy Director
Compliance and Enforcement Division

Prepared By: Georgianne Turner, Section Manager 
Solid Waste Enforcement Section
Waste Evaluation and Enforcement Branch
Compliance and Enforcement Division

Request Date: January 10, 2011

Action By: January 13, 2011

Decision Subject: Consideration of Stay of Notice and Order to Cease and Desist and Cleanup and Abate, EA 2010-01, for Woodmill Recycling Company (07-AA-0062)

SUMMARY

On December 16, 2010, the Contra Costa County LEA issued Woodmill Recycling Company (WRC) a Notice and Order (N&O) to cease and desist operating as an illegal solid waste facility and to cleanup and abate green waste/material and inert debris. On December 30, 2010, the operator of the WRC, through their consultant Sweetser & Associates, Inc., submitted a request to the Director of CalRecycle to stay the order under provisions of the Public Resources Code (PRC), Section 45017. At the same time, the operator appealed the N&O to the LEA's Hearing Panel pursuant PRC 44307. The LEA is currently in the process of setting up the hearing. However, the hearing date must occur before January 31, 2011.

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TIME FRAMES: Staff received WRC's request via e-mail on December 30, 2010. Under the provisions of PRC 45017, CalRecycle must act on the petition within 14 days, which is January 13, 2011.

OPTIONS

1. Stay the effect of the order, pending the completion of administrative appeals before the Contra Costa LEA hearing panel or CalRecycle.
2. Stay the effect of a portion of the order pending the completion of administrative appeals before the Contra Costa LEA hearing panel or CalRecycle.
3. Deny the request for stay.

ANALYSIS AND FINDINGS

PRC Section 45017(a)(2) allows the owner or operator of a solid waste facility operating under a solid waste facilities permit to petition the executive director of CalRecycle to stay the effect of an enforcement order or determination, or portion thereof, pending the completion of administrative appeals before the hearing panel or hearing officer or CalRecycle. Section 45017(a)(3) provides the same right to the owner or operator of an unpermitted solid waste handling activity. The petition is required to be in writing and must state the *extraordinary circumstances* that justify the stay.¹

On December 30, 2010, CalRecycle received the operator's request for stay in writing via e-mail. The operator identifies the *extraordinary circumstance* in the request for stay by stating that the order would put the operator out of business if they had to 1) remove the inert debris at the rate requested in the order and 2) had to stop receiving material at the site. The request for stay did not identify any essential public service interruption that would result from the order. Staff do not believe that there would be any interruption of service to the community that would affect the public health and safety or the environment. Altamont Landfill and Vasco Road Landfill are approximately 13 miles from the facility and could receive and process or dispose the material now received at WRC.

Under Paragraph 5 of the Notice and Order (page 5), the LEA authorizes the operator to submit an alternative removal frequency for the inert debris and compostable material (green waste). The operator submitted such a plan on December 30, 2010, which significantly reduces the required removal frequency. (See attachment to the operator's letter to Randall L. Sawyer, Director of Environmental Health, dated December 30, 2010, at page 6.) The N&O required 770 tons² of inert debris per week to be removed from the site and the operator's alternative schedule outlined a removal

¹ The owner or operator of a permitted facility shall also allege facts, if any, that would support a determination that the enforcement order will preclude or interfere with the provision of an essential public service that would cause an adverse effect on the public health and safety or the environment. PRC § 45017(a)(2)(B). If this is the case, the executive director's determination must be made in 3 days instead of 14 days. That provision does not apply here because the operation is not a permitted solid waste facility and the owner/operator has not alleged such facts.

² Note: The Alternative Removal Schedule specified the removal of 1,000 cubic yards of green material. Staff has applied conversion factors to convert the volume measurement to a weight measurement (500 lb/cubic yard).

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frequency of 500 tons per month. Additionally, the operator proposed that compostable material removal frequency be reduced from 200 tons per day, as stated in the N&O, to 250 tons* per month, as outlined in the operator's initial Alternative Removal Schedule. Subsequently, the operator submitted a *revised* Alternative Removal Schedule, dated January 7, 2011, which increased the operator's proposed removal frequency of the green waste to 400 tons per month. The *revised* Alternative Removal Schedule additionally states that the operator will resubmit the Enforcement Agency Notification to allow acceptance of the inert material. Note that this is not a provision given in the N&O to remedy the violations and in fact was explicitly identified in the cover letter of the N&O as problematic. However, since the operator did submit an alternative waste removal schedule, Woodmill is currently operating under this schedule. The LEA is currently planning on meeting with the operator to discuss the possibilities of increasing the schedule frequency the operator proposed. Based on that discussion the LEA may amend the removal frequency in the N&O to reflect the new schedule or may revise the order to specify a different schedule.

The operator also makes a claim that if they are unable to accept material at the facility that this would also put them out of business (see page 5, Paragraphs 1 and 2 of the N&O). The N&O requires the operator to cease accepting materials not authorized under the EA Notification applicable to the operation, or from handling them in a way that results in operation outside their current authorization as a Small Volume C & D Wood Debris Chipping and Grinding Operation pursuant to 14 CCR 17383.3. At present, the green waste at the site is actively composting, an activity not authorized under WRC's EA Notification. Under the N&O, the operator may continue to accept wood waste and construction wood waste provided that material does not start actively composting. Additionally, the operator has not provided financial records to support his claim or clearly stated what the impact on the business would be based on the facts described above.

Over the course of the past 15 months, the LEA has given the operator numerous opportunities to resolve these violations. The operator's failure to resolve this situation when provided the opportunity should not now constitute an *extraordinary circumstance*. The following provides a list of meetings and a summary of the discussions that the LEA has had with the operator in an effort to obtain compliance at the operation:

- On September 23, 2009, the LEA arranged a meeting with LEA staff and management, CalRecycle staff, John Milochik (operator) and John Cavin (attorney for Woodmill Recycling). The purpose of meeting was to discuss the operator's noncompliance with the original EA Notification as a Small Volume Chipping & Grinding Operation, evaluation and discussion of the current operation and regulatory requirements, and future proposals for accepting additional waste streams, increased volumes and permitting requirements. At the time Mr. Milochik was accepting up to about 12,000 tons of concrete/year and processing (via crushing) about 3,000 tons every 3-4 months. Mr. Cavin stated that a Cease and Desist order on the concrete and asphalt would put Woodmill out of business. Additionally, operating outside the authorized area was discussed.
- On December 21, 2009, the LEA staff and management team arranged a meeting with Mr. Milochik (operator) to allow the operator to demonstrate voluntary compliance regarding the Notice of Violation (NOV) issued by the LEA, dated November 17, 2009. The NOV cited the operator for being in violation of PRC 44002, operating a solid waste facility without a permit,

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specifically, operating as a transfer station without a permit. The NOV cited the operator /directed the operator to:

- o Immediately stop accepting any materials that are not included in their current EA Notification.
- o Immediately remove contaminated and illegally disposed construction wood waste and transport it to a licensed solid waste facility. (Due to violation of Title 14, CCR, Section 17383.3(a)(1) - This facility has received large amounts of contaminated wood waste (greater than 1% by weight).
- o Provide adequate training documentation to the LEA within 30 days. (Due to violation of CCR, Section 17383.3(c)(5) - Employees shall be adequately trained to perform activities specified in this section.)

During the meeting, the operator argued that they had brought the facility into compliance and stopped accepting materials not authorized by the EA Notification. Additionally, the operator committed to applying for a registration permit WRC and stated that he would comply with any and all requirements. At that time, the operator said 4000 tons of inert debris was stockpiled onsite and that it would take about four (4) days to completely process the material.

- On September 23, 2010, Contra Costa Environmental Health requested an Administrative Meeting with the LEA and the operator and other county agencies (including representatives from local planning and fire). The meeting was held at the District Attorney's Office (Steve Bolen) to discuss voluntary compliance for WRC and why the County should not issue a Cease & Desist Order. At the meeting the following outstanding violations were discussed with the operator:
 - o PRC Section 44002 - Operating a solid waste facility without a permit. Accepting concrete, asphalt, tile, brick, palm;
 - o Title 14, CCR, Section 17383.3 (b)(3) - Operating a compost facility without a permit;
 - o Contra Costa County Code, Section 418.4.008 - Operating a solid waste refuse facility without a permit;
 - o PRC 44004 - Significant change in operation, operating beyond 3.0 acres;
 - o Title 14, CCR, Section 17383.3(f) Inability to provide adequate fire prevention, protection and control measures.

A summary of the meeting discussion follows:

- o Larry Sweetser asked about multiple EA Notifications (one for green waste and one for inert debris) and stated that WRC would be preparing these notifications to submit to the LEA;
- o The operator provided a handout with violations listed and timelines for resolving issues. However, these timelines did not respond to the LEA's immediate concerns.
- o The operator stated that he had approximately 10,000 tons of concrete/asphalt combined on-site that needed to be either processed and/or removed off site;

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- Francisco Avila (Contra Costa Planning Department) stated that original terms and conditions have not been met with the existing land use permit, and that the pending land use permit still requires tests and studies from various agencies and that well and septic permits have never been finalized;
- Approval granted for fire protection proposed, but specifications for details need to be clarified.
- On November 9, 2010 a meeting was requested and held by Contra Costa Board of Supervisor Piepho's office. Contra Costa Environmental Health was present. Tomi Vanderbrook, aide to Supervisor Piepho's office stated that Woodmill Recycling was not to accept any other materials until approval has been granted.

The LEA along with the district attorney investigator conducted an inspection of the site on January 10, 2011. The LEA determined that the operator had processed significant amount of the inert debris material on site. Approximately 13,000 tons of processed inert material remains onsite ready for removal and one pile approximately 900 cubic yards needs to be processed. The LEA could not see evidence of the operator receiving new material at the site. The operator had removed 412 tons of green material (palm leaves) in December 2010 and 200 tons in January 2011. Additionally, records showed that 1227 tons of inert debris were removed since December 2010. The LEA found the chip and grind material at a temperature of 135 degrees Fahrenheit, exceeding the 122 degree composting threshold. Therefore the operator is in partial compliance with the order by removing the green material and inert debris, but is still operating as a compost facility.

Other Facts Relevant to the Case

- PRC 44002(b) requires the LEA to issue a cease and desist order to a facility operator ordering an immediate cessation of all activities until the operator obtains a valid solid waste facilities permit authorizing all of the activities at the facility.
- The LEA has noted violations for operating outside the Notification Tier as a Wood Chipping and Grinding Operation since June 3, 2008. Prior to October of 2010, the operator made no significant progress towards complying.
- The facility had a fire on October 12, 2010.
- The LEA has informed CalRecycle staff that the operator has verbally and in writing threatened the LEA inspector. This matter has resulted in the need for the state inspector, local sheriff's department and county DA investigators to accompany the LEA on their inspections at various times.

RECOMMENDATION

In summary, based on the evidence provided by the operator and the LEA, staff do not find that there are extraordinary circumstances that would justify the stay of the Notice and Order. The operator has not provided evidence that complying with the order would force it out of business, but has merely asserted that such a result would occur. Further, even if compliance would force the operator out of business, staff does not consider that an "extraordinary circumstance," even though the result would be

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harsh from the operator's perspective. Every illegal solid waste facility subject to a cease and desist order could (and would) make the same argument. If the threatened business closure were found to be an "extraordinary circumstance," each unpermitted facility would be allowed to continue in operation until appeals to the local hearing panel or hearing officer and CalRecycle were completed, a process that would take several months. That outcome is not justified in light of PRC Section 44002.³ Therefore, staff recommend that the stay be denied.

DIRECTOR ACTION:

On the basis of the information in this Request for Action, I hereby deny the request for stay for Woodmill Recycling Company (07-AA-0062).

Dated:



Mark Leary, Acting Director
Department of Resources Recycling and Recovery

Attachments:

Request for Stay (Request for Hearing, Removal Schedule, LEA response on EA Notification, LEA Notice and Order), December 30, 2010

Revised Removal Schedule, January 7, 2011

³ PRC § 44002: "(a)(1) No person shall operate a solid waste facility without a solid waste facilities permit...(b) If the enforcement agency determines that a person is operating a solid waste facility in violation of subdivision (a), the enforcement agency shall immediately issue a cease and desist order...ordering the facility to immediately cease all activities for which a solid waste facilities permit is required..."



Assisting you through the regulatory maze

SWEETSER & ASSOCIATES, INC.

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Richmond, CA 94801
Phone: (510) 703-0898
Fax: (510) 405-2020
sweetser@aol.com

December 30, 2010

Margo Reid-Brown, Director
Department of Resources Recycling and Recovery (CalRecycle)
801 K Street, MS 19-01
Sacramento, CA 95814

RE: Woodmill Request for Stay of Notice and Order to Cease and Desist and Clean Up and Abatement No. EA-2010-01

Dear Ms. Reid-Brown:

On behalf of Woodmill Recycling and pursuant to Public Resources Code, Section 45017, we are requesting a stay of Notice and Order to Cease and Desist and Clean Up and Abatement No. EA-2010-01. Woodmill Recycling is a small business operating a recycling operation in Byron, Contra Costa County, and accepted green waste, wood waste, construction wood waste, and inert materials. Unfortunately, the operation has been too successful at recycling materials resulting in some operational issues.

A request for a hearing panel is also being submitted to the Local Enforcement Agency (LEA), Contra Costa Environmental Health. The intent of the hearing panel request is to request revisions to provisions of the recently issued Cease and Desist order to allow additional time for removal of excess material stored on the site, filing of an additional Enforcement Agency Notification Tier for the Inert Debris, to obtain approval of an alternative Clean Up and Removal Schedule, and to address other operational issues. A copy of the Cease and Desist is attached along with a copy of the Request for an Appeal to Local Hearing Panel.

Woodmill is requesting a stay of the Cease and Desist Order to allow time to address the above issues. Without a stay, the current Cease and Desist Order imposes impractical and excessive time frames for removal of material and disposal in a landfill rather than processed into recyclable materials and are financially not viable.

The time frames imposed in the Cease and Desist would require the material to be sent for landfill disposal rather than being processed into recyclable materials. Woodmill has been diligently processing the material and is striving to market the material as quickly as possible. Woodmill is proposing an alternative Clean Up and Removal Schedule as allowed in Cease and Desist provision 5. A stay is requested to allow time to work with the LEA on a mutually beneficial schedule. Woodmill is confident that additional time, from that required in the Cease and Desist Order, will result in the required reduction of the stored materials as well as the more beneficial recycling of the material.

Another issue in the Cease and Desist Order is the acceptance of inert materials as allowed by the land use permit. Woodmill had worked with the LEA to file the original Enforcement Agency Notification Tier as a Small Volume C&D Wood Debris operation. A Notification Tier for an Inert Debris Type A Processing Operations should also have been submitted at that time but for some reason it was not filed. Multiple Notification Tiers on one site are recognized in LEA Advisory #39. This advisory provides useful guidance but is not an enforceable document. We are attempting to resolve this issue with the LEA by requesting multiple Notification Tiers for the operation and demonstrating, as much as feasible the distinct separation between the two Notification Tier activities. The Cease and Desist Order requires removal of all inert material. The continued acceptance of inert debris is essential to the financial viability of the operation. A stay of the Cease and Desist order will allow Woodmill time to work with the LEA on filing complete multiple notification tiers thus eliminating several provisions in the Cease and Desist Order.

The Cease and Desist Order requires the following actions by Woodmill:

1. Immediately cease and desist all activities for which a solid waste facility permit is required and it specifically identified three activities including handling material other than green material, exceeding minimum temperatures of some green material, and storage of material more than 48 hours.
2. Immediately operate consistent with the requirements for a Small Volume C&D Wood Debris Chip and Grind Operation.
3. Remove all inert debris within three months at the rate of 770 cubic yards weekly
4. Within three months, remove all green material stored greater than 48 hours, remove a minimum of 200 tons per day of green waste and provide disposal receipts
5. Submit an alternate Clean Up and Removal Schedule for materials in items #4 and #4
6. Provide weekly disposal receipts to the LEA.

Woodmill is providing detailed response to each of these required actions in the Request for a Hearing Panel and will provide you with a copy once it is complete. Listed below are brief responses to each of these required actions for your consideration of this request for a stay:

1. Woodmill is submitting an Enforcement Agency Notification Tier for Inert Debris to synchronize the solid waste requirements with the land use permit. No other non-green waste material is accepted. The temperature exceedances have been localized to the processed fines and Woodmill is working on implementing measures to meet the temperature requirements. Not including the inert materials that will be included in the Inert Notification Tier submittal, storage of incoming material more than 48 hours is limited to palm tree material that requires special processing. Woodmill has already been processing this material and reducing this stockpile and expects to complete that removal, weather permitting, within a little more time than required in the Cease and Desist Order. No other solid waste permit activities have been identified at the site. Woodmill is proposing to apply for a full solid waste permit to replace the Notification Tiers once a revised land use permit is approved.
2. Other than as indicated above in response to provision #1 and the amount of green material stored on site, Woodmill is in compliance with the requirements for a Small Volume C&D

Wood Debris Chip and Grind Operation. Woodmill has already started processing and removal of the excess material and is requesting some additional time to complete this effort than required in the Cease and Desist Order.

3. The Inert Debris Notification Tier will nullify this action. Woodmill has completed processing 95% of the inerts stockpile into marketable commodities and is working to sell off that material. In addition, the required removal of at least 770 cubic yards of inerts weekly is not feasible. Woodmill estimates that the required rate of removal would require 59 truck loads per week at the estimated cost of \$45,000 per week. There is about 1,000 cubic yards of inerts left to process and 15,000 cubic yards of processed material ready for sale. This is a total 16,000 cubic yards of material on site and at the rate of the required 770 cubic yards per week will require nearly 21 weeks to remove all inert material from the site which is beyond the required three month time frame and would cost over **\$922,760** to transport this material. Removal of the entire amount of inerts on site within the required three months would require 1,333.33 cubic yards removed weekly at the cost of \$75,000 per week. This cost is obviously not affordable for a small business and would likely result in the need to seek additional funding possibly under the CalRecycle Solid Waste Clean-up Program.

The Inert Notification tier allows up to 1,500 incoming tons per day and a maximum of 30 days storage or 45,000 tons on site which is about 45,000 cubic yards. This is much more than the current 16,000 cubic yards on site.

Utilizing the Inert Notification Tier and continued reductions of the processed material would be a far more productive means to compliance.

4. The only green material over 48 hours is the palm tree material. This material is difficult to grind but Woodmill has reduced the stockpile by 10 percent in one week of grinding. There is about 3,200 cubic yards remaining of this material on site. Woodmill can accommodate processing and removing 400 cubic yards per week which will require 8 weeks of processing. Given expected weather impacts and the need to utilize the equipment to grind the other green material, Woodmill is expected to need a little additional time than the required three months and is proposing this additional time in the alternative Clean Up and Removal Schedule that will be submitted to the LEA as allowed by Provision 5 of the Cease and Desist Order. A stay is needed to allow the LEA to consider this alternative Schedule.

The requirement for removal of a minimum of 200 tons per day of green waste is excessive. The submitted Notification for the Small Volume C&D Wood Debris Chip and Grind Operation indicated that a maximum of 120 cubic yards (or about 40 tons per day) of incoming material will be accepted. Woodmill is in compliance with that limit. The Cease and Desist Order requires removal of 200 tons per day "as required by 14 CCR, Section 17383.3". This section does not directly reference the removal frequency of 200 tons per day and Woodmill does not receive that amount of material. Woodmill is proposing an alternative removal frequency of 1,000 cubic yards of processed material per month from the existing stockpiles and can provide weight tags for this removal rather than disposal receipts since this material is sent for reuse and recycling and not landfill. A stay is needed for this provision to allow time to resolve the alternative schedule with the LEA.

5. As indicated several times previously, Woodmill is submitting an alternative Clean Up and Removal Schedule to the LEA. The LEA allowed submittal of an alternative schedule by January 1, 2011 but the Cease and Desist Order is effective immediately so a stay is needed to allow the LEA and Woodmill to finalize the alternative schedule.
6. Also as indicate above, Woodmill can provide weight tags for removal of processed material rather than disposal receipts since this material is sent for reuse and recycling and not landfill. Disposal receipts can be provided for waste sent for landfilling.

Lastly, Woodmill is operating beyond the approved footprint in the Local Land Use Permit and is undertaking these actions to address that issue. This is an issue with compliance with the Use Permit that Woodmill is addressing with these efforts and not directly related to compliance with the Enforcement Agency Notification Tiers or state minimum standards for these facilities.

I have had discussions with Michael Bledsoe and Mark deBie on many of the statutory and regulatory issues related to Woodmill Recycling. They have been most helpful in sorting out the complications of the statutory and regulatory issues. I do not know if the LEA has sought their guidance on these issues but Michael and Mark might provide some insight into your consideration of this request for a stay of the Cease and Desist Order.

Thank you for your consideration of this request for a stay of the Cease and Desist Order.

Please contact me if you have any questions or if you need additional information,

Sincerely



Larry D. Sweetser, Jr., M.S., R.E.A.
President

Enclosure

cc: John Milochik, Woodmill Recycling
Randall L. Sawyer, Director of Environmental Health, Contra Costa Environmental Health
Agnes Vinluan, Senior Environmental Health Specialist, Contra Costa Environmental Health
Michael Bledsoe, CalRecycle
Mark deBie, CalRecycle
John F. Cavin, Bardellini, Straw, Cavin & Bupp, LLP

REQUEST FOR HEARING

Before the Local Solid Waste Hearing Panel or Hearing Officer

Public Resources Code (PRC) 44310 et. seq.

Enforcement Agency:	Contra Costa Environmental Health		
Facility Name:	Woodmill Recycling	SWIS No:	07-AA-0062
Facility Address:	5595 Byron Hot Springs Road	City:	Byron
		Zip Code:	94514

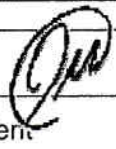
Name of Petitioner:	John Milochik, Woodmill Recycling
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Requests a Hearing in the matter of (check one):	
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<input type="checkbox"/> Challenge terms and/or conditions of the <input type="checkbox"/> proposed (PRC 44307) or <input type="checkbox"/> issued (CCR 21650(g)) Solid Waste Facility Permit (SWFP)
<input checked="" type="checkbox"/> Appeal an enforcement order (PRC 44307, 45017(b))
<input type="checkbox"/> Alleged failure of the EA to act as required by law or regulation (PRC 44307)
<input type="checkbox"/> Appeal completeness review of <input type="checkbox"/> Registration (CCR 18104.4) or <input type="checkbox"/> Standardized (CCR 18105.4) SWFP.
<input type="checkbox"/> Denial of the SWFP (PRC 44300)
<input type="checkbox"/> Suspension of the SWFP (PRC 44305)
<input type="checkbox"/> Revocation of the SWFP (PRC 44306)
<input type="checkbox"/> Denial of Proposed RFI Amendment(s) (CCR 21665)

Statement of the Issues (Appellants may wish to add additional pages to fully explain the legal and factual basis for their appeal):	<input checked="" type="checkbox"/> Check if additional pages are attached.
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Please see attached letter explaining the basis for the appeal.

Signature:		Typed Name:	John Milochik
Title:	President	Date:	December 30, 2010



WOODMILL RECYCLING COMPANY

December 30th, 2010

**Mr. Randall L. Sawyer
Director of Environmental Health
Contra Costa County Environmental Health Services
2120 Diamond Blvd., Suite 200
Concord, CA 94520**

Re: Request for Local Hearing Panel on Appeal of Notice and Order to Cease and Desist and Clean Up and Abatement issued to Woodmill Recycling Company

Dear Mr. Sawyer,

On the basis of the factual and sincere information below, I petition you to please stay the effect of the Notice and Order and I am requesting an appeal to the Hearing Panel pursuant to Public Resources Code Section 44310. These requests are based upon compliance efforts already undertaken and concerns with provisions of the issued Notice and Order to Cease and Desist.

Woodmill has been making steady progress on removal of materials on-site and the other compliance issues. Since our previous meeting on November 9th, the following measures have been undertaken:

- Decreased the amount of unprocessed Inert Debris stored on site by approximately 15,000 cubic yards with 200 cubic yards remaining to process. The processed material is ready to market.
- Decreased the operational footprint by 50%
- Decreased the footprint of the entire operation to approximately 6 acres
- Decreased the amount of palm material onsite by 10% or 400 cubic yards in one week of processing. The remaining amount of palm material is approximately 3,200 cubic yards and is expected to be removed by April 15th weather permitting.
- All incoming green material on-site, with the exception of the palm material discussed above, is not kept on site more than the required time.
- The EA Notification for Inert Debris Type A Processing Operations is being re-filed with the requested information
- Perforated pipes have been installed in the violation generating pile of fines and it is being monitored for temperature improvement.

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TEL: 925-634-WOOD (9663) FAX: 925-961-0152
www.woodmillrecycling.com

The Hearing Panel appeal is based upon the statement of the issues listed below with detailed explanations attached in the responses to the six provisions of the Cease and Desist Order:

- Significant progress has been made to comply with removal of materials from the site.
- Pending Enforcement Agency Notification for Inert Debris Type A Processing Operations to align the original site operations with the appropriate multiple notification tiers.
- Economic infeasibility of timelines imposed in the Cease and Desist order that would divert limited finances from more productive efforts to remove materials and other compliance efforts.
- Woodmill Recycling's objective to remain a viable local business and in compliance with the regulatory requirements
- Full compliance with the timelines imposed by the Cease and Desist Order would bankrupt Woodmill Recycling.
- Pending Land Use Permit Amendment which will contribute towards and support Environmental Health concerns/violations/issues and eventually a full solid waste permit is proposed.

A request for a stay is being submitted to the Director of CalRecycle and is also warranted by the progress made to date and the infeasibility of complying with the excessively stringent time lines imposed in the Notice and Order to Cease and Desist. A more realistic timeline is necessary to meet the compliance objectives of the Cease and Desist Order.

Provision Number 1

I have reviewed the Notice and Order very carefully. I understand that in Order provision #1 I am ordered to cease and desist all activities in which a solid waste permit is required. I have already implemented a number of measures to comply with those requirements prior to receiving the referenced Notice and Order. The three issues that your office has identified as requiring a solid waste permit are: 1) acceptance of inert materials not identified in the Green material Notification' 2) storage of palm material beyond the required time limits; and 3) temperature exceedances of green material.

As you are aware, Larry Sweetser and I have submitted an EA Notification which will allow us to accept Inert Debris in compliance with my 2007 land use permit. As requested, we will be providing an updated Notification for Inert Debris Type A Processing Operations with the requested information.

Palm material is being removed as quickly as feasible and over approximately 400 cubic yards have been removed since December 1st during a combined 4 days of processing. The remaining 3,200 cubic yards are expected to be removed at the rate of about 1,000 cubic yards per month with complete removal expected by April, 15th 2011 weather permitting. Equipment limitations prevent continuous processing of this material. No other incoming green material is stored in excess of the allowed time limits. Woodmill is

undertaking a number of measures to address the temperature exceedances. We can provide updated information on the status of these efforts at the hearing panel.

Independent of these issues in the Cease and Desist Order, Woodmill is attempting to update the Land Use Permit for the site and eventually seek a solid waste facility permit to allow consolidated operations over an increased footprint. In order to proceed expeditiously with that process, the issues in the Cease and Desist Order need to be resolved.

Provision Number 2

In Order #2, I am ordered to operate consistent with my original chip and grind EA Notification. I have complied with that order prior to receiving the referenced Notice and Order. Along with complying, we have been diligently cleaning up the facility by processing and exporting material that falls outside our chip and grind boundaries, including older material that exceeds the 48 hour time allotment. I can send you copies of weight tags of sold inerts debris bi-product (base rock) upon request. The efforts to comply with this measure are discussed in the above response to Provision number 1. The amount of green material on-site has been reduced by 50%. Woodmill's efforts have been to reduce the size of the material piles rather than the overall footprint since consolidation of the piles would impinge on the required fire lanes and the costs would be prohibited until the pile size has been reduced further.

Provision Number 3

In Order #3 I am ordered to remove all inert debris from the facility. I have been making earnest efforts to reduce the amount of inert debris stored on site. In addition and as indicated above, we will be submitting an updated Notification for an Inert Debris Type A Processing Operations that will conform the existing types of materials to the original use permit that included green material and inerts. Unfortunately, it is not financially possible for me to remove all inert material (specifically the base rock, 95% of inert debris have been processed). The best option that I have which I propose to you, will both comply and keep the business operating financially, would be to process the remaining inerts and sell the road base bi-product. Fortunately, we are currently doing just that. We have been processing the inert debris for the last few weeks and have approximately 200 cubic yards of remaining inert debris to process compared to 15,000 cubic yards only a month ago. We have reduced our inerts debris inventory by 95% as of this letter. These efforts will reduce the amount of material to well under the Inert Debris Type A Notification Tier maximum allowed inventory and the remaining 5% is within the west 2.5 acres as permitted in the 2007 Land Use Permit.

In addition, the required removal of at least 770 cubic yards of inerts weekly is not feasible. Woodmill estimates that the required rate of removal would require 59 truck loads per week at the estimated cost of \$45,000 per week. There is about 1,000 cubic yards of inerts left to process and 15,000 cubic yards of processed material ready for sale. This is a total 16,000 cubic yards of material on site and at the rate of the required 770 cubic yards per week will require nearly 21 weeks to remove all inert material from the site which is beyond the

required three month time frame and would cost over **\$922,760** to transport this material. Removal of the entire amount of inerts on site within the require three months would require 1,333.33 cubic yards removed weekly at the cost of \$75,000 per week. This cost is obvious not affordable for a small business and would likely result in the need to seek additional funding possibly under the CalRecycle Solid Waste Clean-up Program.

The Inert Notification tier allows up to 1,500 incoming tons per day and a maximum of 30 days storage or 45,000 tons on site which is about 45,000 cubic yards. This is much more than the current 16,000 cubic yards on site.

Utilizing the Inert Notification Tier and continued reductions of the processed material would be a far more productive means to compliance.

Provision Number 4

In Order #4 I am ordered to remove all greenwaste and compostable material stored over 48 hours within the next 3 months. The Order states that I am required to remove 200 tons per day of green waste. I do not believe we have 200 tons of material that falls under that category here at the facility. The only green material stored more than 48 hours is the palm material which I have been removing about 200 tons or 400 cubic yards per week. There is about 3,200 yards remaining which is mixed with some leaves and demolition wood and that is expected to be removed by April 15th. I will continue efforts already put in place that are accomplishing the same objective (processing and removing older material from facility).

The requirement for removal of a minimum of 200 tons per day of all green waste is excessive. The submitted Notification for the Small Volume C&D Wood Debris Chip and Grind Operation indicated that a maximum of 120 cubic yards (or about 40 tons per day) of incoming material will be accepted. Woodmill is in compliance with that limit. The Cease and Desist Order requires removal of 200 tons per day "as required by 14 CCR, Section 17383.3". This section does not directly reference the removal frequency of 200 tons per day and Woodmill does not receive that amount of material. Woodmill is proposing an alternative removal frequency of 1,000 cubic yards of processed material per month from the existing stockpiles and will provide weight tags for this removal rather than disposal receipts since this material is sent for reuse and recycling and not landfill.

Provision Number 5

In Order #5 I am ordered to submit a clean up and removal schedule on or before January 1, 2011. Attached to this Request for a Hearing Panel is a proposed, draft Clean Up and Removal Schedule. Due to the Christmas and New Year holidays and having employees on vacation, it is difficult to contact the necessary equipment providers and outlets for removal of materials. I ask that the deadline for this submittal be extended to the 15th of January so that I can put everything into perspective and receive counsel on practical deadlines for processing and removal of material. In the meantime, I have provided a Proposed Clean Up and Removal Schedule for your review. An average monthly removal

frequency is being proposed as the benchmark since the current winter rains significantly impede removal of material. In addition, the trucking costs and time to schedule daily removals is not financially feasible. Processing of the inert material also requires arrangements for a contracted grinding operation. There is a limit to the amount of inerts that can be processed at one time. Another consideration for this revised removal frequency is the efforts already undertaken to remove reduce the amount of material that had been stored on site.

Provision Number 6

In Order Provision #6 I am ordered to provide "disposal receipts" for inerts and compostable material on a weekly basis. Since the objective of Woodmill is to provide materials for recycling, "disposal" receipts are not the appropriate means to demonstrate removal of materials from the site. The only manner in which I can stay in business while complying is to continue my efforts of recycling/processing the referenced material and sell the bi-product. Therefore, rather than disposal receipts, I am proposing to provide outgoing weight tags which will demonstrate the amount of material leaving the facility.

Summary

Woodmill has been actively taking a number of measures to reduce the amount of material stored on site and to address the other compliance issues. Based upon those efforts outlined above and the need for revisions to the Cease and Desist order, Woodmill is requesting this stay of the provisions of the Cease and Desist Order and is requesting this Appeal to the Hearing Panel. A completed Request for Hearing, Form 218, is attached. Woodmill intends to provide additional documentation at the Hearing Panel.

Thank you for your consideration of this request for an appeal to the hearing panel.

Please provide instructions on the date and time of the hearing panel and any other logistics.

Sincerely,



John Milochik

Enclosures

cc: Agnes Vinluan, Senior Environmental Health Specialist, Contra Costa Env. Health
John F. Cavin, Bardellini, Straw, Cavin & Bupp, LLP
Larry Sweetser, Sweetser & Associates, Inc.

Woodmill Recycling

Proposed Clean Up and Removal Schedule

Woodmill is proposing the following clean up and removal schedule.

Material Type	Average Removal Frequency
Palm material	1,000 cubic yards per month
Base Rock (inert debris bi-product)	500 tons per month

Removal of material will occur regularly until the operation is within the 2.5 acres. Weekly receipts of material removed will be provided. Due to weather and equipment considerations, the proposed frequencies are average rates. Woodmill is proposing to revise this schedule by January 15, 2011 once we have confirmed equipment, personnel, and vendor arrangements that have not been positively confirmed due to the holidays.

WILLIAM B. WALKER, M.D.
HEALTH SERVICES DIRECTOR
RANDALL L. SAWYER
INTERIM ENVIRONMENTAL HEALTH DIRECTOR



CONTRA COSTA
ENVIRONMENTAL HEALTH

2120 Diamond Blvd., Suite 200
Concord, California 94520
Ph (925) 692-2500
Fax (925) 692-2502
www.cocoeh.org

CERTIFIED MAIL

December 16, 2010

Larry Sweetser
Sweetser & Associates, Inc.
2115 Rheem Avenue
Richmond, CA 94801

**RE: Enforcement Agency (EA) Notifications: Inert Debris Type A and Revised Green Material
Woodmill Recycling Company, 5595 Byron Hot Springs Road, Byron, APN 002-110-020, SWIS#
07-AA-0062**

Dear Mr. Sweetser:

On November 12, 2010, Contra Costa Environmental Health (CCEH) received two Enforcement Agency (EA) Notification requests from Woodmill Recycling Company (WRC). One is for an Inert Debris Type A Processing Operation and the other is a revision of the current EA Notification allowing a Small Volume Chipping & Grinding Operation.

The following comments incorporate the overall assessment of the operation and maintenance of this facility, including compliance history relative to the State Minimum Compliance Standards contained in the California Code of Regulations (CCR), Title 14, the Public Resources Code (PRC), and Contra Costa County Ordinance. (Also see also CalRecycle's LEA Advisory #39, copy attached).

The land use permit application (County File#LP072008) submitted by WRC on February 17, 2007, requested the approval to establish a recycling facility for concrete, asphalt, and green waste. According the Contra Costa County Department of Conservation and Development, WRC has not demonstrated that the terms and conditions of the land use permit (LUP) have been met.

The current approved EA Notification specified operation of a Small Volume Chipping and Grinding facility. Pursuant to this EA Notification, the facility may only accept green waste, wood waste, and construction wood waste; however the facility has been receiving unapproved materials (i.e., concrete, asphalt, tile, brick, etc), and has been not been meeting Minimum State Compliance Standards. The land use permit restricts the operation to the front 2 ½ acres of the property, while the EA Notification is limited a maximum of 3 acres. WRC currently operates on 7.0 + acres of the 10.0 acre parcel. To comply with both the LUP and the current EA Notification, operations at this site are limited to the front 2 ½ acres.

CCEH has conducted inspections of the business since March 24, 2008. The facility has not been able to meet the Minimum State Compliance Standards and has been notified of this fact via inspection reports (quarterly from March 24, 2008 through December 29, 2009; and monthly from February 23, 2010 to date), a violation letter dated November 17, 2009, and meetings held on September 23, 2009, December 21, 2009, March 10, 2009, and September 23, 2010. In order to operate under two EA Notifications (as requested by the forms



submitted to CCEH) at this site, the operator will need to demonstrate that each operation is separate, distinct, and meets the State Minimum Standards.

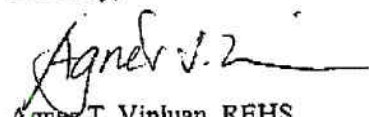
During inspections, the facility has been observed to have one access road for ingress and egress, a single entrance gate, a single scale house and attendant. There is one employee that works in the storage and processing areas. The storage and processing areas for both inert debris (concrete, tile, asphalt, etc.) and green material and green waste (including but not limited to drying and processed palm, leaves, clippings), wood waste and construction wood waste, sod, and processed green material are all located on one contiguous parcel. (See current map of facility operations attached.) A single set of operating and training records are maintained. Heavy equipment (e.g., bulldozer) is used throughout the 7.0+ acre parcel.

Based on the information submitted, CCEH cannot make a determination that these are separate and distinct operations meeting the State Minimum Standards. Please submit to CCEH sufficient details, including a plot map, demonstrating that the proposed EA Notification operations are separate, distinct, and meet the state minimum standards. CCEH is the lead agency to determine whether or not the submitted EA Notifications will meet the minimum requirements, however, this does not preclude any other requirements of the Contra Costa County Department of Conservation and Development (DCD) that may apply during WRC's process to obtain a current Land Use permit and the CEQA process. Consideration as to whether or not WRC can meet the qualifications of an EA Notification include, reviewing the compliance history of this site.

Additionally, the previously discussed Cease & Desist Order and Compliance Schedule are attached regarding the status of the current EA Notification for a Small Volume Chipping & Grind Operation for WRC.

If you have any questions, please contact me at 925-692-2569.

Sincerely,



Agnes T. Vinluan, REHS
Environmental Health Specialist II
Solid Waste Program

cc: Randy Sawyer, Director of Environmental Health
Richard Lee, Assistant Director of Environmental Health
Joe Doser, Supervising Environmental Health Specialist
Steve Bolen, Deputy District Attorney
Tomi Van de Brooke, Chief of Staff, Supervisor Piepho's Office
Aruna Bhat, Department of Conservation & Development
Francisco Avila, Senior Planner DCD
Steve Aubert, Contra Costa Fire Protection Department
Patty Cookson, Building Inspection Department
John Milochik, Woodmill Recycling Company

ATV:lj

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
AS ENFORCEMENT AGENCY FOR CONTRA COSTA COUNTY

In the Matter of:) DECLARATION OF
) AGNES T. VINLUAN
)
THE OPERATION OF WOODMILL RECYCLING) RE: NOTICE AND ORDER TO
COMPANY, FACILITY NO. 07-AA-0062,) CEASE AND DESIST & CLEAN
LOCATED AT 5595 BYRON HOT SPRINGS) UP AND ABATEMENT NO.
ROAD, BYRON, CA; ASSESSOR'S PARCEL) EA-2010-01
NUMBER: 002-210-020 IN VIOLATION OF)
PUBLIC RESOURCES CODE, SECTIONS 44002,)
44004, 45000, 45010.0, 45005, 45011 AND 45023;
CALIFORNIA CODE OF REGULATIONS, TITLE
14, SECTIONS 18304, 18304.1 AND 18304.3.

DECLARATION IN SUPPORT OF NOTICE AND ORDER

I, Agnes T. Vinluan, declare as follows:

1. I am currently employed as a Senior Environmental Health Specialist by Contra Costa Environmental Health (CCEH), a position I have held for thirteen years. Pursuant to the Public Resources Code (PRC), Section 43200 and the California Code of Regulations (CCR), Title 14, Section 18304, CCEH is the local enforcement agency (LEA) for Contra Costa County. My duties with CCEH include inspecting solid waste facilities and disposal sites in Contra Costa County to determine their

1 compliance with the Integrated Waste Management Act, known also as "The Act"
2 (PRC Section 40000 et seq.), CCR, Title 14, Sections 18304, 18304.1 and 18304.3.1

3 2. I have personal knowledge that Woodmill Recycling Company (WRC) described in
4 the Notice and Order No. EA-2010-01 is in violation of the Act and CCR, Title 14,
5 specifically, Section 17383.3, not operating as a SMALL VOLUME Construction &
6 Demolition Wood Debris CHIPPING AND GRINDING Operation pursuant to the
7 EA Notification received by CCEH on February 14, 2008 and received by
8 CalRecycle on February 21, 2008. As a Small Volume C & D Wood Debris
9 Chipping and Grinding facility, the operation is to accept no more than 120 cubic
10 yards per day of "greenwaste, wood waste, and construction wood waste"; and to
11 operate on 3.0 acres.

12 3. I have personal knowledge that on June 3, 2009, during an inspection at WRC with
13 Laura Sullivan, CalRecycle staff, that the facility is in violation of PRC 44002, for
14 accepting concrete, asphalt, brick, tile, and other inert debris not indicated on the
15 current EA Notification. Additional inspection reports citing PRC 44002 were on
16 December 29, 2009; January 28, 2010; June 28, 2010; July 22 2010; August 25, 2010;
17 and September 15, 2010.

18 4. I have personal knowledge that on October 12, 2010, Tim Kraus, Senior
19 Environmental Health Specialist, CCEH conducted an inspection in response to a fire
20 that occurred at the facility. Mr. Kraus noted that the operator of the facility was still
21 conducting activities that require a solid waste facilities permit, such as receiving
22 accepting and handling or processing concrete, brick, tile, asphalt, and other inert
23 debris; receiving and accepting compostable material; and operating a compostable
24 material handling facility in violation of PRC 44002.

25 5. I have personal knowledge that CCEH issued a violation letter to WRC dated
26 November 17, 2009 regarding PRC 44002 as described under Item#3.

27 6. I have personal knowledge that CCEH met with WRC and discussed the facility's

1 operation in violation of PRC 44002 (as described under Item# 3) in meetings with
2 the owner/operator, Mr. John Milochik on September 23, 2009; December 21, 2009;
3 and March 10, 2009.

4 7. I have personal knowledge that on May 25, 2010, facility records indicate that
5 compostable material was not removed from WRC for 27 days; January 28, 2010
6 facility records indicated that compostable material was not removed from WRC for
7 14 days due to "rainy weather"; CCEH also recorded temperatures of compostable
8 materials at or above 122 degrees Fahrenheit. Both the storage time and recorded
9 temperatures (indicated in inspection dates below) are in violation of PRC 44002.
10 CCEH has recorded at or above 122 degrees Fahrenheit on the following dates of
11 inspection:

- 12 • December 29, 2009: 123-130 degrees Fahrenheit
- 13 • January 28, 2010: 128-138 degrees Fahrenheit
- 14 • February 23, 2010: 125-150 degrees Fahrenheit
- 15 • April 2, 2010: 150 degrees Fahrenheit
- 16 • May 25, 2010: 123-140 degrees Fahrenheit
- 17 • June 28, 2010: 137-139 degrees Fahrenheit
- 18 • July 22, 2010: 160 degrees Fahrenheit
- 19 • August 25, 2010: 138 degrees Fahrenheit
- 20 • September 23, 2010: 150 degrees Fahrenheit
- 21 • October 12, 2010: Focused inspection conducted due to fire incident.

22 8. I have personal knowledge that WRC is in violation of CCR, Title 14, Section 17383.3(f),
23 providing adequate fire prevention, protection and control measures, including, but not
24 limited to, temperature monitoring, adequate water supply for fire suppression, and the
25 isolation of potential ignition sources from combustible materials as cited in inspection
26 reports dated April 2, 2010; May 25, 2010; and October 12, 2010.
27

9. I have personal knowledge that WRC is in violation of PRC 44004, currently operating on 7.0 acres of a 10.0 acre contiguous parcel, parcel number 002-210-020, making a significant change in the operation without approval from the LEA and/or CalRecycle as cited in inspection reports dated: July 22, 2010; August 25, 2010; and October 12, 2010.

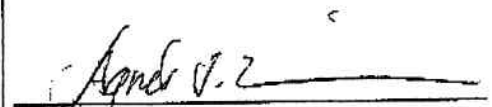
10. I have personal knowledge that on September 23, 2010, CCEH held an Administrative meeting with owner/operator, Mr. John Molochik and other regulatory agencies to discuss violations of the facility regarding PRC 44002 and 44004; CCR, Title 14, Sections 17383.3, 17383.3(f) and 17383.3(b)(3); and that if these violations were not corrected, that a Cease and Desist Order would be issued.

11. I have personal knowledge that all of the inspection reports and correspondences mentioned in this Notice and Order, EA-2010-01 were sent to the owner/operator of WRC, Mr. John Milochik via certified mail.

12. The specific conditions I observed at WRC which constitute violations and the corresponding statutory, regulatory, or permit requirements are specified in the inspection reports and the Notice and Order issued herewith.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12.16.10


Agnes T. Vinluan, REHS
Senior Environmental Health Specialist
Solid Waste Program

Contra Costa Environmental Health
2120 Diamond Blvd., Suite 200
Concord, CA 94520

WRC Declaration, 12.14.10

BEFORE THE
CONTRA COSTA ENVIRONMENTAL HEALTH
AS ENFORCEMENT AGENCY FOR CONTRA COSTA COUNTY

In the Matter of:) NOTICE AND ORDER TO CEASE AND
MR. JOHN MILOCHIK, OWNER &) DESIST AND CLEAN UP AND
OPERATOR OF WOODMILL RECYCLING) ABATEMENT
COMPANY LOCATED AT 5595 BYRON) NO. EA-2010-01
HOT SPRINGS ROAD, BYRON, CA.)
FACILITY NO. 07-AA-0062) PUBLIC RESOURCES CODE (PRC)
44002, 44004, 45010.0, 45000, 45005,
45011, AND 45023; AND CALIFORNIA
CODE OF REGULATIONS (CCR)
SECTIONS 18304 AND 18304.1, 18304.3.

TO: MR. JOHN MILOCHIK, OWNER AND OPERATOR OF WOODMILL
RECYCLING COMPANY located at 5595 BYRON HOT SPRINGS ROAD, BYRON, CA

PLEASE TAKE NOTICE THAT:

WHEREAS, the WOODMILL RECYCLING COMPANY (WRC), an unpermitted solid
waste facility, is located at 5595 BYRON HOT SPRINGS ROAD, BYRON, California (APN
002-210-020); and

WHEREAS, CONTRA COSTA ENVIRONMENTAL HEALTH, AS THE LOCAL
ENFORCEMENT AGENCY (LEA) has authority to act in the capacity of enforcement agency
(EA) for this facility pursuant to Public Resource Code (PRC) §43200 et seq., and the California
Code of Regulations (CCR), Section 18304 and is so acting; and

1 WHEREAS, the owner and operator of WRC, an unpermitted solid waste facility is in
2 violation of Title 14 CCR, Section 17383.3 as the facility is not operating as a SMALL VOLUME
3 C & D Wood Debris CHIPPING AND GRINDING Operation pursuant to the EA Notification
4 received by Contra Costa Environmental Health (CCEH) on February 14, 2008 and received by
5 CalRecycle on February 21, 2008. As a Small Volume C & D Wood Debris Chipping and Grinding
6 facility, the operation is to accept no more than 120 cubic yards per day of "greenwaste, wood
7 waste, and construction wood waste"; and operate between the hours in the winter of 8:00 am - 5:00
8 pm (Monday through Friday), Saturdays between 9:00 am - 3:00 pm; and in the summer from 6:00
9 am to 6:00 pm (Monday through Friday), Saturdays between; within 3.0 acres; and

10 WHEREAS, on June 3, 2009 during an inspection at WRC with Laura Sullivan, CalRecycle
11 staff, it was documented in the inspection report that the operation conducted by WRC was in
12 violation of PRC 44002 for accepting concrete and other construction items not indicated in the
13 Small Volume C & D Wood Debris Chipping and Grinding EA Notification. The
14 owner/operator was instructed in writing on this date by the LEA in their inspection report dated
15 June 3, 2009 to "Immediately discontinue accepting any material that has not originally been
16 included in the EA Notification". In additional inspection reports, the LEA cited PRC 44002 on
17 December 29, 2009; January 28, 2010; June 28, 2010; July 22, 2010; August 25, 2010; September
18 15, 2010; and

19 WHEREAS, CCEH conducted an inspection due to a fire at WRC on October 12, 2010.
20 During the inspection the LEA again noted that the operator was conducting activities that
21 required a solid waste facilities permit, such as receiving, accepting and handling or processing
22 concrete, brick, tile, asphalt, and other inert debris; receiving and accepting compostable
23 material; operating a compostable material handling facility, and is in violation of PRC 44002 as
24 documented in the LEA's inspection report; and

25 WHEREAS, CCEH recorded at or above 122 degrees Fahrenheit and being observed storing
26 compostable material at the site for more than 48 hours. Both activities are not included in the
27 Small Volume C & D Wood Debris Chipping and Grinding EA Notification and require

1 authorization through the issuance of a solid waste facilities permit and if not corrected, a Cease
2 and Desist Order would be issued; and

3 WHEREAS, the LEA informed Mr. Milochik that WRC is in violation of Title 14, CCR,
4 Section 17383.3(b)(3): Receiving and accepting compostable material in the form of green
5 material that was found to exceed 122 degrees Fahrenheit. Green material on-site was measured
6 with a compost thermometer and found to be compostable materials, cited in inspection reports
7 for inspections conducted on these dates with corresponding observed green material
8 temperatures:

- 9 • December 29, 2009: 123-130 degrees Fahrenheit
- 10 • January 28, 2010: 128-138 degrees Fahrenheit
- 11 • February 23, 2010: 125-150 degrees Fahrenheit
- 12 • April 2, 2010: 150 degrees Fahrenheit
- 13 • May 25, 2010: 123-140 degrees Fahrenheit
- 14 • June 28, 2010: 137-139 degrees Fahrenheit
- 15 • July 22, 2010: 160 degrees Fahrenheit
- 16 • August 25, 2010: 138 degrees Fahrenheit
- 17 • September 23, 2010: 150 degrees Fahrenheit
- 18 • October 12, 2010: Focused inspection conducted after a reported fire, as evidence of
19 violations of Title 14 CCR, Section 17383.3(b)(3); and

20 WHEREAS, the LEA informed Mr. Milochik that WRC is in violation of Title 14, CCR,
21 Section 17383.3(f): as cited in inspection reports dated April 2, 2010; May 25, 2010; October
22 12, 2010; and

23 WHEREAS, the LEA notified MR. JOHN MILOCHIK, owner and operator of WRC that
24 he is in violation of PRC 44004: Making a significant change in the operation without approval
25 from the LEA and CalRecycle, as cited in inspection reports dated September 29, 2009; July 22,
26 2010; August 25, 2010; September 25, 2010; October 12, 2010 and discussed during the
27 Administrative meeting on September 23, 2010 and that the solid waste handling and

1 compostable material handling activities are occurring on 7.0 acres, 4.0 acres beyond that which
2 was included in the Small Volume C & D Wood Debris EA Notification - determined using a
3 measuring wheel. This is documented in inspection reports conducted on June 23, 2010, July 22,
4 2010, August 25, 2010, September 15, 2010 and October 12, 2010. This section was also
5 discussed at the Administrative meeting held by CCEH on September 23, 2010; and

6 WHEREAS, WRC approved the EA Notification to operate A Small Volume C&D
7 Chipping and Grinding operation with allows the facility to operate within 3.0 acres. The facility
8 currently operates on 7.0 + acres of a 10.0 acre contiguous parcel located at 5595 Byron
9 Highway, Byron California, assessor's parcel # 002-210-020. Within the 7+ acres, the CCEH
10 observed that this facility has one access road for ingress and egress, a main gate, a scale house
11 and an attendant, a portable toilet for employee use. There is one employee that works in the
12 storage and processing areas. Storage and processing areas of inert debris (concrete, tile, asphalt,
13 etc) and green material and green waste (including but not limited to drying and processed palm,
14 leaves, clippings), wood waste, and construction wood waste, sod, and processed green material
15 are all located on one contiguous parcel. Operating records that have been reviewed during
16 inspections have been reviewed at the scale house. Training of employees for health and safety,
17 operations and maintenance of facility are recorded and kept in a binder for review. Heavy
18 equipment, such as the bulldozer, have been observed to be used throughout the 7.0+ acre parcel;
19 and

20 WHEREAS, at the request of Contra Costa Environmental Health, LEA staff met with
21 Mr. John Milochik, owner and operator of WRC on September 23, 2010 (Administrative
22 meeting) to clarify the applicable requirements and to determine what actions, if any, that the
23 owner or operator may voluntarily take to bring the Facility/Site into compliance by the earliest
24 feasible date, pursuant to PRC section 45010.2.

25 THEREFORE, PURSUANT TO PRC SECTIONS 44002, 45000, 45005, 45011, AND
26 MR. JOHN MILOCHIK, OWNER AND OPERATOR OF WOODMILL RECYCLING
27 COMPANY IS ORDERED TO:

1. Immediately cease and desist all activities for which a solid waste facilities permit is required and that WRC has not been approved for. These activities include, but are not limited to: (a) receiving, handling or processing of all materials other than "green waste, wood waste, and construction wood waste"; and (b) operating a compostable material handling facility (Compliance requires maintaining temperatures of green material below 122 degrees Fahrenheit AND storing the material for less than 48 hours on-site.)
2. Immediately operate consistent with the requirements of a Small Volume C & D Wood Debris Chip and Grind Operation pursuant to 14 CCR, Section 17383.3.
3. Within 3 months, remove ALL inert debris from the facility. The clean up and removal schedule (schedule) is that at least 770 cubic yards of inert debris must be removed weekly. Disposal receipts must be provided weekly to CCEH for review until all inert debris has been removed, and must be available on-site.
4. Within 3 months remove ALL green waste/material and compostable material stored on-site for greater than 48 hours from the facility. This facility is also still required to remove at minimum, 200 tons per day of green waste as required in 14 CCR, Section 17383.3. Disposal receipts for green waste must be provided weekly to CCEH for review until all green waste stored greater than 48 hours on-site has been removed, and must be available on-site.
5. As owner/operator of WRC, submit a clean up and removal schedule ON OR BEFORE JANUARY 1, 2011 which provides specific amounts of inert debris and compostable material, removal frequency, etc. **IF THE OWNER/OPERATOR OF WRC, MR. JOHN MILOCHIK DOES NOT PROVIDE A WRITTEN CLEAN UP AND REMOVAL SCHEDULE BY JANUARY 1, 2011, THE OWNER/OPERATOR OF WRC WILL BE RESPONSIBLE FOR ADHERING TO THE SCHEDULE STATED UNDER ITEMS #3 AND #4 OF THIS ORDER, OR WILL BE SUBJECT TO PENALTIES AND FURTHER ADMINISTRATIVE ACTION.**

6. Disposal receipts for inert debris and compostable material must be submitted weekly to: Agnes Vinluan, Senior Environmental Health Specialist, Contra Costa Environmental Health, 2120 Diamond Boulevard, Suite 200, Concord, California 94520, or the owner/operator will be subject to penalties or further administrative action.

THEREFORE, PLEASE TAKE NOTICE THAT PURSUANT TO PRC SECTIONS 45010.1, 45011, 45014, AND 45023, if the above actions are not completed or complied with by the specified dates, The LEA may pursue further administrative and legal action.

1. Impose administrative civil penalties in an amount not to exceed \$5,000 for each violation, for each day the violation continues. [PRC §45010.1]
2. Impose administrative civil penalties in an amount not to exceed \$5,000 per day for each day the Facility/Site fails to achieve compliance with the time frames specified above. [PRC §45011]
3. Petition the superior court for injunctive relief to enforce this Notice and Order. [PRC §45014].
4. Petition the superior court for civil penalties in an amount not to exceed \$10,000 per day for each violation. [PRC §§45023 and 45024]

Failure to remedy the aforementioned violation(s) by the required date(s) may result in the LEA and/or CalRecycle expending available funds to perform any cleanup, abatement, or remedial work required under the circumstances set forth in PRC §45002 which, in the judgement of the LEA and/or CalRecycle, is required by the magnitude of endeavor or the need for prompt action to protect public health and safety or the environment. If the LEA and/or CalRecycle expends funds to perform any cleanup, abatement, or remedial work, the LEA and/or CalRecycle may seek cost reimbursement from responsible parties, pursuant to PRC §48020 et seq.

Failure to allow or provide the LEA/ CalRecycle or its contractor with access to enter onto the property and perform all necessary cleanup, abatement, or remedial work may result in

1 the LEA/CalRecycle pursuing a warrant from the court to permit reasonable access to the
2 property to perform the activity(ies), pursuant to PRC §44100.

3 Nothing in this Notice and Order shall constitute or be construed as a satisfaction or
4 release from liability for any conditions or claims arising as a result of past, current, or future
5 operations. Notwithstanding compliance with the terms of this Notice and Order, the owner and
6 operator may be required to take further actions as necessary to protect the public health, safety,
7 or the environment.

8 The LEA and/or CalRecycle shall not be liable for injuries or damages to persons or
9 property resulting from acts or omissions by the owner or operator or related parties in carrying
10 out activities pursuant to this Notice and Order, nor shall the LEA and/or CalRecycle be held as a
11 party to any contract entered into by the owner or operator or their agent(s) in carrying out
12 activities pursuant to this Notice and Order.

13 This Notice and Order is supported by the accompanying declaration of Agnes Vinluan,
14 Senior Environmental Health Specialist. This Notice and Order does not relieve the owner or
15 operator from complying with all other local, state, and federal requirements, nor does it
16 preclude the LEA and/or CalRecycle from taking any and all other actions allowed by law.

17 This Notice and Order may only be amended in writing by an appropriate representative
18 of the EA.

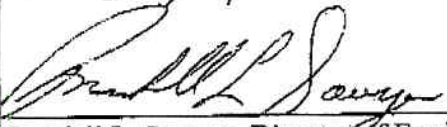
19 **PLEASE TAKE NOTICE THAT:**

- 20 1. You have the right to appeal this Notice and Order to the Hearing Panel. [PRC
21 §44307]
- 22 2. If you wish to appeal this Notice and Order to the Hearing Panel, you must do so by
23 submitting a written request for a hearing to the undersigned, together with a
24 statement of issues on which your appeal is based, within 15 days from the date you
25 receive this Notice and Order. [PRC §44310]
- 26 3. An appeal of this Notice and Order does not stay the effect of any provision of this
27 Notice and Order; however, you may petition the Director, in writing, to stay the

1 effect of this Notice and Order, or portion thereof, pending the completion of your
2 administrative appeals. [PRC §45017]
3

4 This Notice and Order is issued as of the date set forth below.
5

6 Dated: 12/16/10

7 
8
9 Randall L. Sawyer, Director of Environmental Health
Contra Costa Environmental Health Services

10 Acting as the Enforcement Agency for Contra Costa County

11 Contra Costa Environmental Health
12 2120 Diamond Boulevard, Suite 200
Concord, CA 94520

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WOODMILL RECYCLING COMPANY

January 7, 2011

Mr. Randall L. Sawyer
Director of Environmental Health
Contra Costa County Environmental Health Services
2120 Diamond Blvd., Suite 200
Concord, CA 94520

Re: Revised Clean Up and Removal Schedule

Dear Mr. Sawyer:

Attached is Woodmill's revised Alternate Clean Up and Removal Schedule. This schedule supplements our efforts already undertaken to process and remove material from the site. This schedule takes into account our best estimate of staffing, equipment availability, potential weather impacts, and anticipated markets. Woodmill is committed to the reuse and recycling of collected material.

We are indicating that the removals frequencies are a monthly average (4 week average) since weather, personnel, and equipment can impact the removal during any given week.

The palm material removal frequency was changed to tons to match the units of the weight tags submitted.

Nearly all of the inert material previously received has been processed and the received material is within the original 2.5 acres. The processed inerts will be removed until the material is within the 2.5 acres.

Woodmill will be refilling the Enforcement Agency Notification tier to allow the acceptance of inert material and Woodmill wants to work with your office on this effort.

5595 BYRON HOT SPRINGS RD., BYRON, CA, 94514
TEL: 925-634-WOOD (9663) FAX: 925-961-0152
www.woodmillrecycling.com

Randall L. Sawyer
January 7, 2011
Page 2

Thank you for your flexibility in submitting this revised schedule. Please contact either myself (925) 575-4842 or Larry Sweetser at (510) 703-0898 with any questions.

Sincerely,



John Milochik

Enclosure

cc: Richard Lee, Assistant Director of Environmental Health, CCEH
Joe Doser, Supervising Environmental Health Specialist, CCEH Agnes Vinluan,
Senior Environmental Health Specialist, Contra Costa Env.Health
Mark Leary, Acting Director, CalRecycle
Elliot Block, Chief Counsel, CalRecycle
Michael Bledsoe, Staff Counsel III, CalRecycle
Mark deBie, Branch Chief, CalRecycle
Georgianne Turner, Manager, CalRecycle
John F. Cavin, Bardellini, Straw, Cavin & Bupp, LLP
Larry Sweetser, Sweetser & Associates, Inc.

Woodmill Recycling
Alternate Clean Up and Removal Schedule
January 7, 2011

Woodmill is proposing the following clean up and removal schedule.

Material Type	Average Removal Frequency *
Palm material	400 tons per month
Base Rock (processed inert debris bi-product)	500 tons per month

* Removal of material will occur regularly until the two operations are within the 2.5 acres. Weekly receipts of material removed will be provided. Due to weather and equipment considerations, the proposed frequencies are average rates based upon a four week average.

Woodmill will also be filing an Enforcement Agency Notification Tier for Inert Debris Type A Processing Operations.

